

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TITLE: *UNITED STATES v. MARK SCHENA*
CASE NUMBER: 5:20-CR-00425 EJD

Minute Order and Trial Log

Date: August 19, 2022

Time in Court: 9:01-9:43 AM; 9:58-10:30; 10:44 AM – 12:58 PM; 1:57-3:22 PM; 3:35-4:27 PM
(TOTAL time: 5 hr, 45 min)

Courtroom Deputy Clerk: Cheré Robinson
Court Reporter: Irene Rodriguez

APPEARANCES:

Plaintiff Attorney(s) present: Laura Connelly, Jacob Foster, Christina Liu
Also present: Paralegal – Noah Schloeger
Special Agent – James Gawyrch

Defendant Attorney(s) present: Todd Pickles, Alexandra Block

Also present: Paralegal – Dennis Meraz
Mark Schena (out-of-custody)

PROCEEDINGS: Jury Trial (Day 9)

Jury Trial held August 19, 2022

See attached Trial Log.

Charging Conference set for August 22, 2022, at 9:00 AM
Further Jury Trial set for August 23, 2022, at 9:00 AM.

The following exhibits are marked for identification:

Plaintiffs: 1105, 1106, 1107, 1108, 1111, 1116, 1117, 676, 679, 680, 691, 692, 696, 699, 707, 708,
657, 672, 675, 678, 683, 686, 688, 695, 870, 874, 875, 1100, 1102, 1103, 1121, 1122,
1124, 1130, 1131, 1132, 1133, 1148, 1149, 1400

Defendants:

The following exhibits are admitted into evidence:

Plaintiffs: 1105, 1106, 1107, 1108, 1111, 1116, 1117, 676, 679, 680, 691, 692, 696, 699, 707, 708,
657, 672, 675, 678, 683, 686, 688, 695, 870, 874, 875, 1100, 1102, 1103, 1121, 1122,
1124, 1130, 1131, 1132, 1133, 1148, 1149, 1400

Defendants:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HONORABLE EDWARD J. DAVILA

Case Name: *United States v. Mark Schena*
Case No: 5:20- CR-00425 EJD

TRIAL LOG

Trial Date: August 19, 2022			REPORTER(S): Irene Rodriguez	CLERK: Cheré Robinson
PLF	DEFT	TIME	DESCRIPTION	
		9:01 am	Court in session with Counsel out of presence of Jury and witnesses	
		9:03 am	Discussion of ECF No. 197 - Defense Trial Brief re Evidentiary Objections re Govt Remaining Witnesses or Evidence	
		9:43 am	Court breaks for 15 minutes	
		9:58 am	Court in session with Counsel in presence of Jury	
			Court queries Jury re previous admonishment	
		9:59 am	Government calls Witness #18 Alex Kondratenko	
		10:00 am	Witness sworn	
			Government begins direct examination of Alex Kondratenko	
See at right		10:03 am	ADMITTED into Evidence – Exs. 1105, 1106, 1107, 1108, 1111, 1116, 1117	
		10:06 am	Ex. 1107, previously admitted - 2019-06-04 Colbert Email to BSC re New Facility Arrayit Corporation, and attachments – BCBS CA_ALLIED_Contract Signed.pdf; EIN Veritification Arrayit corporation.pdf; NPPES NPI Registry.pdf; Intro ltr Arrayit.pdf; W-9 Arrayit Corportion.pdf	
		10:07 am	Ex. 1105, previously admitted – May 2019 BSC/Arrayit Email String re [EXT] -Application, and attachments – Arrayit Corporation – CP575 IRS Letter.pdf; Arayit Corporation – CLIA Certificate EXP 04-18-2020.pdf	
		10:23 am	Ex. 1108, previously admitted - 2020-05-07 BSC Letter to Arrayit Corporation re Notice of Pre-payment Claim Review for Arrayit Corporation; NPI 1104316157; Provider Number PG0091105001	

Cheré Robinson
Courtroom Deputy
Original: Efiled
CC:

Trial Date: August 19, 2022			REPORTER(S): Irene Rodriguez	CLERK: Cheré Robinson
PLF	DEFT	TIME	DESCRIPTION	
		10:29 am	Government completes direct	
		10:30 am	Court breaks for 14 min.	
		10:44 am	Court in session in presence of Jury and Witness #18, Alex Kondratenko	
		10:45 am	Defense begins cross-examination of Alex Kondratenko	
			Ex. 1105, previously admitted	
		10:50 am	Ex. 1108, previously admitted	
		10:52 am	Defense completes cross-examination of Alex Kondratenko	
		10:53 am	Government begins redirect examination of Alex Kondratenko	
		10:57 am	Government completes redirect examination of Alex Kondratenko	
			Witness #18 Alex Kondratenko excused	
			Government calls Witness #19 Susan Zullo	
		11:59 am	Witness sworn	
See at right		11:01 am	ADMITTED into Evidence (subject to Defense comments) – Exs. 676, 679, 680, 691, 692, 696, 699, 707, 708	
			Government begins direct examination of Susan Zullo	
		11:26 am	Ex. 679, previously admitted - 2020-04-14 R. Schena Email to cdrh-eua-templates@fda.hhs.gov re Notification and EUA application from Arrayit Corporation, and attachments – Arayit Emergency Use Authorization Application for IgG Antibody Testing.pdf; Arrayit SARS-CoV-2 Test Clinical Specifications.pdf; Arrayit PT Results.pdf; sample test report negative.pdf; sample test report positive.pdf; Arrayit Laboratory Test Procedure.pdf; Arrayit Validataion Data.xlsx; Arrayit Allergy and Food Intolerance Client Services Manual.pdf; Arrayit test requisition.pdf	
		11:27 am	Ex. 679, attachment A - Arayit Emergency Use Authorization Application for IgG Antibody Testing.pdf	
		11:31 am	Ex. 679, attachment H - Arrayit Allergy and Food Intolerance Client Services Manual.pdf	

Trial Date: August 19, 2022			REPORTER(S): Irene Rodriguez	CLERK: Cheré Robinson
PLF	DEFT	TIME	DESCRIPTION	
		11:36 am	Ex. 679, attachment I - Arrayit test requisition.pdf	
		11:44 am	Ex. 679, attachment E - sample test report positive.pdf	
		11:47 am	Ex. 685, previously admitted - 2020-04-17 Zullo Email to R. Schena re Conversion of EUA200281 to a Pre-EUA	
		11:48 am	Ex. 699, previously admitted - 2020-04-14 US FDA Acknowledge Letter to Arrayit Corporation, and Apr 2020 CDRH-EUA Templates/Schena Email String re Notification and EUA application from Arrayit Corporation	
		11:49 am	Ex. 707, previously admitted - 2020-04-27 Zullo Email to R. Schena re Information Regarding PEUA200540	
		11:53 am	Ex. 691, previously admitted - Apr/May 2020 R. Schena/Zullo Email String re Information Regarding PEUA200540, and attachment – Arrayit EUA Application May 10 2020.pdf	
		12:04 pm	Government completes direct examination of Susan Zullo	
			Defense begins cross- examination of Susan Zullo	
		12:36 pm	Ex. 691, previously admitted.	
		12:46 pm	Defense completes cross-examination of Susan Zullo	
		12:47 pm	Government begins redirect examination of Susan Zullo	
		12:49 pm	Ex. 691, previously admitted	
		12:54 pm	Government completes redirect examination of Susan Zullo	
			Witness #19 Susan Zullo excused	
			Side-bar discussion begins	
		12:55 pm	Side-bar discussion ends	
			Court addresses Jury	
		12:56 pm	Jury breaks for lunch	
		12:58 pm	Court breaks for 59 minutes	

Trial Date: August 19, 2022			REPORTER(S): Irene Rodriguez	CLERK: Cheré Robinson
PLF	DEFT	TIME	DESCRIPTION	
		1:57 pm	Court in session with Counsel in presence of Jury	
			Government calls Witness #20 Teresa Resendez	
			Witness sworn	
		1:58 pm	Government begins direct examination of Teresa Resendez	
		2:11 pm	Government completes direct examination of Teresa Resendez	
			Witness #20 Teresa Resendez excused	
			Government calls Witness #21 Carol Pazskiewicz	
		2:13 pm	Witness sworn	
See at right		2:14 pm	ADMITTED into Evidence – Exs. 657, 672, 675, 678, 680, 683, 686, 688, 695, 870, 874, 875, 1100, 1102, 1103, 1121, 1122, 1124, 1130, 1131, 1132, 1133, 1148, 1149, 1400	
		2:15 pm	Government begins direct examination of Carol Pazskiewicz	
		2:25 pm	Ex. 308, previously admitted	
		2:29 pm	Ex. 657, previously admitted - 2020-03-17 M. Schena Email to R. Schena re ORDER	
		2:30 pm	Ex. 308, previously admitted	
		2:33 pm	Ex. 401, previously admitted	
		2:36 pm	Ex. 919, previously admitted	
		2:55 pm	Ex. 218, previously admitted	
		2:56 pm	Ex. 122, previously admitted - Arrayit Press Release Titled: Arrayit Corporation Increases Weekly Guidance for Doctor-Prescribed Allergy Testing Clinical Services	
		2:59 pm	Ex. 237, previously admitted	
		3:04 pm	Ex. 1000, previously admitted	
		3:14 pm	Ex. 654, previously admitted	

Trial Date: August 19, 2022			REPORTER(S): Irene Rodriguez	CLERK: Cheré Robinson
PLF	DEFT	TIME	DESCRIPTION	
		3:15 pm	Jury departs Courtroom for break	
			Witness #21 Carol Pazskiewicz departs Courtroom	
			Court in session with Counsel out of presence of Jury and witnesses	
		3:22 pm	Court breaks for 13 minutes	
		3:35 pm	Court in session with Counsel in presence of Jury and Witness #21 Carol Pazskiewicz	
			Defense begins cross-examination of Carol Pazskiewicz	
			Defense completes cross-examination of Carol Pazskiewicz	
		4:21 pm	Witness #21 Carol Pazskiewicz excused	
			Side-bar session begins	
		4:23 pm	Side-bar session ends	
			Court addresses Jury	
		4:24 pm	Court admonishes Jury	
			Court in session with Counsel out of presence of Jury and witnesses	
			Charging Conference set for August 22, 2022, at 9:00 AM	
		4:27 pm	Court adjourns	
			Further Jury trial set for August 23, 2022, at 9:00 AM	